

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
August 7, 2007 Session

**TOM R. SMITH v. THOMAS HARDING POTTER**

**Appeal from the Chancery Court for Davidson County**  
**No. 06-991-III Ellen Hobbs Lyle, Chancellor**

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**No. M2006-02078-COA-R3-CV - Filed on August 17, 2007**

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This issue in this case is whether a litigant is entitled to a refund of a filing fee when a case is filed with the wrong court. Mr. Smith filed an appeal of a general sessions court judgment with the Davidson County Chancery Court. After filing his appeal in chancery court, Mr. Smith realized that Tennessee law provides that general sessions appeals are within the exclusive jurisdiction of the circuit court; he then filed a motion for a refund of his filing fee from the Clerk and Master in the amount of \$192.50. The chancery court denied Mr. Smith's motion and dismissed his lawsuit. In deciding where to file his appeal, Mr. Smith said he relied upon the statement of a deputy clerk in the Clerk and Master's office, who told him that the office "accepts appeals from general sessions all the time," and upon the fee schedule of the Clerk and Master's office, which among other types of cases lists a filing fee for "Appeals from General Sessions." Mr. Smith appeals the chancery court's ruling that he was not entitled to a refund of his filing fee. After careful review, we find that there is no legal basis for allowing a refund of filing fee when a party files an appeal in a court which lacks subject matter jurisdiction over the dispute. Furthermore, Mr. Smith failed to satisfy the requirements of equitable estoppel based on the alleged statement of the clerk and the fee schedule. As a result, we hold that the chancery court did not err in denying Mr. Smith's request for a refund. We affirm and remand.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Tom R. Smith, Nashville, Tennessee, pro se Appellant.

Sue B. Cain, James E. Robinson, J. Brooks Fox, and Elizabeth A. Sanders, Nashville, Tennessee, for the Respondent, Davidson County Clerk and Master.

## OPINION

### *I. Background*

This case arises from attempts of the plaintiff, Tom R. Smith, to obtain a refund of his filing fee from the Davidson County Chancery Court after discovering that he had filed his appeal from a general sessions court judgment to the wrong court.

Mr. Smith, an attorney, filed a claim on his own behalf against Thomas Harding Potter in the Metropolitan General Sessions Court on February 28, 2006, seeking to collect on a promissory note which Mr. Potter had allegedly failed to pay.<sup>1</sup> The record does not contain details of the proceedings in sessions court; however, it does reflect that the sessions court judge dismissed Mr. Smith's lawsuit on April 12, 2006. At some point after that, Mr. Smith viewed a copy of the fee schedule of the Davidson County Clerk and Master's office, which listed filing fees for 18 different types of cases, plus other fees collected by the office for copying, preparing a record on appeal, and so forth. The fee schedule, which set forth a filing fee of \$192.50 for an "Appeal from General Sessions," was prefaced with the following comment: "TCA 8-21-401, [sic] governs clerk's fees throughout Tennessee and has been amended to provide for standard filing fees to be paid in advance unless otherwise specified. These changes affect fees for all clerks across the state except in Knox County." On April 21, 2006, Mr. Smith visited the Clerk and Master's office, apparently intending to file an appeal from the sessions court judgment. Mr. Smith asserts that he asked a deputy clerk in the office, "Is it okay to appeal general sessions cases to chancery now?", to which the employee allegedly replied, "We take appeals from general sessions all the time." Mr. Smith paid the \$192.50 filing fee and filed a copy of the sessions court judgment with the Clerk and Master's office, along with a copy of the promissory note and a document styled "Motion to Set Case for Trial Before a Jury of Twelve and To Consolidate."<sup>2</sup>

The chancery court entered an order on May 12, 2006, noting the deficiencies in Mr. Smith's earlier filings and stating as follows:

It appears that the plaintiff commenced this lawsuit not by filing a complaint, as is required by the Tennessee Rules of Civil Procedure, but by filing a copy of a warrant from the General Sessions Court of Davidson County. An additional deficiency in the filing is that the

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<sup>1</sup>The promissory note, which was included in the record on appeal, was in the amount of \$8,171.60 plus 10 percent interest until the balance was paid. It also provided for collection costs and a reasonable attorney's fee in the event that Mr. Smith filed suit to collect on the note. The document purports to bear Mr. Potter's signature and the date of January 20, 1999. Although Mr. Potter is shown as a party in the caption of this case, he was only a party in general sessions court and was not involved in the chancery court proceedings on appeal.

<sup>2</sup>Mr. Smith's motion included a request to consolidate this case with a case identified by docket number 06-990-II. We are unaware of the nature of the second matter and find no indication within the record that the chancery court ever consolidated the two cases.

plaintiff did not obtain a summons from the Clerk and Master and have that served upon the defendant. The plaintiff did pay the filing fee in this matter.

The chancery court further ordered Mr. Smith to file a complaint and have a summons served upon the defendant in compliance with the Tennessee Rules of Civil Procedure, warning that it would dismiss Mr. Smith's lawsuit if he did not comply with the chancery court's edict by June 23, 2006.

In response, Mr. Smith filed a "Motion for the Court to Order Refund of Filing Fees" on June 9, 2006, admitting that he should have appealed his case to circuit court, that chancery court did not have jurisdiction over his appeal, and that he had relied upon information from the Clerk and Master's office in making the decision to appeal his sessions court judgment to chancery court. In light of these assertions, Mr. Smith asked the chancery court to order the Clerk and Master to refund his filing fee. He served a copy of his motion on Clerk and Master Christi Scott. Later that month, the chancery court entered an order, without conducting an evidentiary hearing, denying Mr. Smith's motion.

On July 6, 2006, the chancery court dismissed Mr. Smith's lawsuit, in keeping with its previous order indicating that Mr. Smith needed to file a complaint and serve a summons on the defendant in order to properly initiate his lawsuit in chancery court, which he had not done. Mr. Smith then filed a "Motion to Alter or Amend; for Finding of Fact and Conclusions of Law" on July 27, 2006, asserting that the chancery court erred by denying him a refund without first holding an evidentiary hearing. Alternately, Mr. Smith argued that his motion for a refund of the chancery court filing fee should have been granted pursuant to the Davidson County Local Rules of Practice because no response in opposition to his motion was filed or served by the Clerk and Master. Finally, Mr. Smith asserted that he was entitled to a refund because "the Clerk and Master's office clearly accepted a fee for which it is impossible to render a service under the laws of the State of Tennessee." In support of his motion, Mr. Smith submitted an affidavit which contained essentially the same recitation of facts as he had included in his motion for a refund of his filing fee. He also included a copy of the fee schedule for the Clerk and Master's office; a copy of Tenn. Code Ann. § 27-5-108, which provides for appeals from general sessions court to circuit court; and an unsigned affidavit of Elaine Harper, an employee of the Clerk and Master.<sup>3</sup>

The chancery court entered a "Memorandum and Order" on August 22, 2006, denying Mr. Smith's motion to alter or amend and once again refusing to order the Clerk and Master to refund Mr. Smith's filing fee. Mr. Smith appeals from the chancery court's refusal to allow him a refund of his filing fee. He does not contest the dismissal of his appeal by the Davidson County Chancery Court.

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<sup>3</sup>In his motion to alter or amend, Mr. Smith explains that he attempted to have Ms. Harper sign the affidavit, but that she declined to do so. Therefore, we will not consider this document for the purpose of deciding Mr. Smith's case.

## ***II. Issue Presented***

The issue presented is whether the trial court erred in denying Mr. Smith's request for a refund of his filing fee.

## ***III. Analysis***

We are confronted in this case with a purely legal question. Therefore, we review the trial court's conclusions of law *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d); ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996); ***Presley v. Bennett***, 860 S.W.2d 857, 859 (Tenn. 1993).

### ***A. Refund of Filing Fee***

As an initial matter, we note that no one involved with this matter has disputed the fact that Mr. Smith filed his appeal with the wrong court. By statute, appeals from general sessions court are to be filed in circuit court. Tenn. Code Ann. § 27-5-108. Mr. Smith, however, filed his appeal in chancery court. After discovering his mistake, he sought a refund of his filing fee from the Clerk and Master. In his unverified "Motion for the Court to Order Refund of Filing Fees," Mr. Smith stated as follows:

Comes now the Plaintiff, Tom R. Smith, and moves this Honorable Court to Order a refund of the filing fees expended by him in this attempted appeal from general sessions court.

For cause, movant will state and show that he relied on the details contained within Exhibit A,<sup>4</sup> which led him to believe that it is now possible to appeal decisions from the general sessions court alternatively to either chancery or circuit court. Further, a deputy clerk affirmed this belief on April 21, 2006 by stating to movant, "We take appeals from general sessions all the time" after being asked, "Is it okay to appeal general sessions cases to chancery now?" However, upon returning to his office and following a discussion with a colleague, movant did further research and found that T.C.A. Section 27-5-108 (Exhibit B) clearly states such appeal is heard *de novo* in the circuit court with no mention of chancery court. Further, *Graves v. Kraft General Foods*, 45 S.W.3d 584 (Tenn. Ct. App. 2000) holds that chancery court had no subject matter jurisdiction to hear an appeal from general sessions court. Additionally, it is not possible for a case appealed from the general sessions court to be transferred from

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<sup>4</sup>Exhibit A to Mr. Smith's motion was a copy of the fee schedule of the Davidson County Clerk and Master's office, which listed a \$192.50 fee for an "Appeal from General Sessions."

circuit court to chancery court for hearing as held by the unreported case of *Miller v. State Farm Insurance Company*, 2004 WL 2951983, a copy of which is attached to this motion as Exhibit C.

The chancery court denied Mr. Smith's motion for a refund, stating as follows in its June 27, 2006, order:

This Court must most respectfully deny the motion. The Court regrets the mistake made by counsel and any indication in the office of the Clerk and Master which allegedly contributed to that mistake. Nevertheless, the movant is an attorney who was able to research the issue and determine the answer. The Court, therefore, concludes that there are not sufficient grounds to refund to him the filing fee.

Although this appears to be a case of first impression in Tennessee, we agree with the reasoning of courts in other jurisdictions which have held that filing fees are generally not refundable. In *Bard v. Lane County Assessor*, No. 020975C, 2002 WL 1968249 (Or. T.C. 2002), a plaintiff appealed the Department of Revenue's denial of her application for a senior citizen property tax deferral. *Id.* at \*1. She later notified the court that her problem had been solved and requested a refund of her \$25 filing fee. *Id.* The tax court declined to refund the plaintiff's filing fee, stating as follows:

Plaintiff may have withdrawn her appeal before any judicial proceedings were held, but the processing of the Complaint and service by the court on the Defendant involves the expenditure of human and financial resources. Once the Complaint is filed and the fee paid, the fee is generally nonrefundable. Such is the case in this appeal.

*Id.*

In *Bell v. Clark*, 194 F.3d 781 (7th Cir. 1999), a plaintiff sought a refund of his filing and docketing fees after the Seventh Circuit Court of Appeals denied his application for a certificate of appealability. *Id.* at 781. The court denied Mr. Bell's request, stating as follows:

There is no refund of a filing fee just because an appellant, petitioner, or other seeker of judicial review is dissatisfied with the outcome of his quest, whether that outcome is defeat on the merits or a refusal, for jurisdictional or other reasons, even to consider the merits.

*Id.* at 781. Similarly, a California district court denied a plaintiff's request for a refund of his filing fees after the plaintiff submitted a letter to the court acquiescing to the dismissal of his case and asking for a refund of his filing fee. *Breiner v. Regents of the Univ. of Calif.*, No. 2:06-cv-1598-

GEB-DAD-PS, 2006 WL 383496, at \*1. The court stated that “once a case is filed and the filing fee paid, the court is unable to refund the filing fee.” *Id.*

The circumstances of Mr. Smith’s case are similar to those in *Faust v. Wisconsin Department of Corrections*, No. 03-C-531-C, 2003 WL 23120101 (W.D. Wis. 2003), in which a plaintiff sought a refund of his filing fee after his case was dismissed by the district court because plaintiff was seeking relief that was unavailable in the type of case he had filed.<sup>5</sup> *Id.* at \*1. The plaintiff argued that he had filed an action in federal court because of a letter sent to him by the clerk of court, which advised him that he would have to file a complaint if he wanted the court to grant him relief. *Id.* Plaintiff proceeded to file a lawsuit, which was dismissed by the court. He then sought a refund of his filing fee. In denying the refund, the court stated as follows:

The administrative costs associated with filing a complaint accrue when a plaintiff’s complaint is processed and assigned a case number. A plaintiff whose case is dismissed, whether at the outset or at some later stage, is not entitled to a refund of the filing fees.

*Id.* We agree with our sister courts in other jurisdictions who have held that regardless of the reasons for filing a lawsuit in particular court and the outcome of the lawsuit, a plaintiff is not entitled to a refund of his filing fee. Mr. Smith has not cited any legal authority to the contrary, and we have found none in our extensive search. Administrative resources are utilized from the moment an appeal (or complaint) is filed. The case must be given a file number, added to the court’s filing system, and placed on a docket for consideration by the chancellor, at a minimum. In the case at bar, not only did Mr. Smith file his appeal, but the chancery court also entered an order concluding that Mr. Smith needed to file a complaint and serve a summons on the defendant so that the lawsuit could proceed. This was followed by other orders regarding the status of Mr. Smith’s lawsuit and then his request for a refund of his filing fee. Thus, both judicial and administrative resources were expended in handling his case. For the above reasons, we must conclude that Mr. Smith is not entitled to a refund of his filing fee.<sup>6</sup>

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<sup>5</sup>The district court stated as follows regarding its earlier dismissal of plaintiff’s claim: “On September 26, 2003, I dismissed this case, which was brought as a civil action pursuant to 42 U.S.C. § 1983. The dismissal was warranted because plaintiff was asking for relief that could be considered only in a petition for a writ of habeas corpus after he exhausted all his state court remedies.”

<sup>6</sup>Although we are denying Mr. Smith’s request for a refund, this Court strongly disapproves of any document which gives the appearance of allowing an appeal in a court that lacks jurisdiction to hear such cases. Therefore, we would encourage the Clerk and Master’s office to revise its fee schedule to list filing fees for only those cases over which the chancery court has subject matter jurisdiction, which should do much to prevent confusion on the part of future appellants. Furthermore, we would encourage the Clerk and Master to better train and educate its employees on the jurisdiction of chancery court if in fact an employee did advise Mr. Smith that “[w]e take appeals from general sessions all the time.”

### ***B. Equitable Estoppel***

In its Memorandum and Order denying Mr. Smith's motion to alter or amend, the chancery court found that Mr. Smith had failed to state a claim for equitable estoppel against the Davidson County Clerk and Master. The chancery court emphasized that

the standard for applying the doctrine of estoppel to a governmental entity is vastly different from application of the doctrine to a private entity. It is the rarest of cases where the doctrine of estoppel can be invoked against the government. More particularly, it is even more difficult for a licensed attorney to assert estoppel against a governmental agency with respect to a representation concerning the law.

While we do not believe Mr. Smith's profession as an attorney is conclusive, we nevertheless agree with the chancery court's ruling that the Clerk and Master is not estopped from denying Mr. Smith a refund of his filing fee because of the alleged comments of a deputy clerk and the fee schedule promulgated by the Clerk and Master's office. The Supreme Court has stated that "[p]ublic agencies are not subject to equitable estoppel . . . to the same extent as private parties and very exceptional circumstances are required to invoke the doctrine against the State and its governmental subdivisions." ***Bledsoe County v. McReynolds***, 703 S.W.2d 123, 124 (Tenn. 1985). We do not find that the circumstances of this case are so exceptional as to justify invocation of the doctrine against the Davidson County Clerk and Master. The elements of a claim for equitable estoppel are well established:

In order to invoke the doctrine of equitable estoppel, a party must show the following:

- (1) his or her lack of knowledge and of the means of knowledge of the truth as to the facts in question;
- (2) his or her reliance upon the conduct of the party who is estopped;
- and
- (3) action by the invoking party based thereon of such a character as to change that party's position prejudicially.

***Sexton v. Sevier County***, 948 S.W.2d 747, 751 (Tenn. Ct. App. 1997). As the party invoking the doctrine of equitable estoppel, Mr. Smith bears the burden of proving the elements above. ***Hardcastle v. Harris***, 170 S.W.3d 67, 85 (Tenn. Ct. App. 2004). As we have stated, "The focus of the inquiry is on the defendant's conduct and the reasonableness of the plaintiff's reliance on that conduct." *Id.* Regarding the first element of an estoppel claim, the Tennessee Supreme Court has held that

[i]t is essential to the estoppel that the person claiming to have been influenced to his detriment was himself not only destitute of

knowledge of the state of facts, but was also without available means of acquiring such knowledge. Where both parties have the same means of ascertaining the truth, there can be no estoppel.

*W.C. Early Co. v. Williams*, 186 S.W. 102 (Tenn. 1916). In his affidavit, Mr. Smith admitted that he “did further research and found that T.C.A. Section 27-5-108 . . . clearly states such appeal is heard de novo [sic] in the circuit court with no mention of chancery court.” He also located a case in which we held that a chancery court does not have subject matter jurisdiction over an appeal from general sessions court, even for the purpose of transferring the appeal to circuit court. *See Graves v. Kraft General Foods*, 45 S.W.3d 584 (Tenn. Ct. App. 2000). Thus, Mr. Smith was certainly capable of acquiring the knowledge of where he should properly file his appeal; he just chose not to do so before appealing his case to chancery court. Because Mr. Smith is unable to supply proof of all of the elements required for an equitable estoppel claim, we find that the Clerk and Master is not estopped from retaining Mr. Smith’s filing fee.

#### ***C. Davidson County Local Rules***

The chancery court also found no merit in Mr. Smith’s assertion that, pursuant to Davidson County Local Rule 26.04, Mr. Smith’s motion for a refund of his filing fee should have been granted because the Clerk and Master failed to file a response to the motion. We agree with the reasoning of the chancery court on this issue when it stated, “Even where no response to a motion is filed, the Court has the authority and, indeed, the duty to deny a motion that is contrary to Tennessee law.”

#### ***IV. Conclusion***

After careful review, we hold that the trial court correctly refused to grant Mr. Smith’s request for a refund of his filing fee. We affirm and remand for further proceedings consistent with this opinion. Exercising our discretion, all costs of this appeal are taxed against the Appellee, Davidson County Clerk and Master.

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SHARON G. LEE, JUDGE